



POSTAL REGULATORY COMMISSION

39 CFR Part 3015

[Docket No. RM2012-3; Order No. 1108]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review to determine whether competitive products provide the appropriate minimum contribution to the Postal Service's institutional costs. This document invites comments to facilitate examination of this question.

DATES: Comments are due: March 5, 2012. Reply comments are due: April 2, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in FOR FURTHER INFORMATION CONTACT by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at stephen.sharfman@prc.gov or 202-789-6820.

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I. Introduction

The Postal Accountability and Enhancement Act (PAEA), P.L. 109-435, 120 Stat. 3218 (2006), directs the Commission to promulgate regulations to ensure that competitive products, collectively, bear an “appropriate share” of the Postal Service’s institutional costs. See 39 U.S.C. 3633(a)(3).

The initial Commission review of this issue determined that competitive products, collectively, annually should contribute a minimum of 5.5 percent of the institutional costs of the Postal Service. Order No. 43, October 29, 2007, paras. 3040-47. The PAEA further directs the Commission to revisit this question every 5 years. See 39 U.S.C. 3633(b).¹

Five years has passed since enactment of the PAEA. The Commission initiates Docket No. RM2012-3 to evaluate how to ensure that the appropriate minimum contribution to the Postal Service’s institutional costs is provided by competitive products. The Commission will decide whether its rule 3015.7(c),

¹ REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.

established in Order No. 43, which sets the 5.5 percent minimum contribution, should be retained in its current form, modified, or eliminated.

When establishing the initial level of appropriate contribution from competitive products, the Commission tried to balance the risk of setting the contribution level too high with the risk of setting it too low. Given a very competitive marketplace where the Postal Service's market share is relatively small, setting the contribution level too high could adversely affect the Postal Service's ability to compete. On the other hand, establishing a markup that is too low could give the Postal Service an artificial competitive advantage. The Commission gave considerable weight to the historical contribution made by items categorized as competitive products by the PAEA. The Commission set the minimum contribution level at 5.5 percent of total institutional costs, in line with the competitive products' estimated contribution to institutional costs of 5.4 percent in FY 2005 and 5.7 percent in FY 2006.

Since rule 3015.7(c) has been in place, the Postal Service's competitive products collectively have covered more than 5.5 percent of the Postal Service's institutional costs. For FY 2007, the revenue from competitive products minus their attributable costs equaled 5.66 percent of total institutional costs.² For FY 2008, the contribution from competitive products represented 5.54 percent of

² FY 2007 Annual Compliance Determination, March 28, 2008, at 113.

total institutional costs.³ The contribution from competitive products to the recovery of the Postal Service's institutional costs was 6.78 percent in FY 2009 and 7.12 percent in FY 2010.⁴ In FY 2009 and FY 2010, institutional costs were reduced compared with previous years, due in part to the congressionally mandated reductions of the required annual contribution to the Retirement Health Benefits Fund. The Postal Service also has increasingly exercised its flexibility to transfer mail volume from market dominant products to competitive products. See 39 U.S.C. 3642.

On December 29, 2011, the Postal Service filed its 2011 Annual Compliance Report with the Commission. That report indicates that in FY 2011 competitive products collectively contributed 7.84 percent of the Postal Service's institutional costs.⁵

II. Invitation to Comment

The Commission invites comments to facilitate its examination of the appropriateness of the current contribution level. To inform its deliberations, the Commission requests comments from interested members of the public on whether and how changes in competitive market conditions, the allocation of costs to competitive products, the number and volume of competitive products, or

³ FY 2008 Annual Compliance Determination, March 30, 2009, at 87.

⁴ FY 2009 Annual Compliance Determination, March 29, 2010, at 117; FY 2010 Annual Compliance Determination, March 29, 2011, at 138.

⁵ See Docket No. ACR2011, FY 2011 Annual Compliance Report, December 29, 2011, at 64. Competitive products contribution, \$2.317 billion, divided by total institutional costs, \$29.554 billion.

any other changes should impact the minimum appropriate share of institutional costs of the Postal Service that should be provided by competitive products. As required by the statute, the Commission in making its determination must consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products. Comments also are welcome on any issues relevant to the reasonableness of the current 5.5 percent contribution requirement and retaining, modifying, or eliminating it.

Comments are due March 5, 2012. Reply comments may be submitted on or before April 2, 2012.

Pursuant to 39 U.S.C. 505, R. Kevin Harle is designated as the officer of the Commission to represent the interests of the general public (Public Representative). The Public Representative will direct the activities of Commission personnel assigned to him and, upon request, will provide their names for the record. Neither the Public Representative nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2012-3, in compliance with 39 U.S.C. 3633(b).

2. The Commission designates R. Kevin Harle as the Public Representative representing the interests of the general public in this proceeding.

3. Comments are due March 5, 2012.

4. Reply comments are due April 2, 2012.

5. The Secretary shall arrange for publication of this notice in the Federal Register.

By the Commission.

Shoshana M. Grove,

Secretary.

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